

RECEIVED
CENTRAL FAX CENTER
NOV 09 2004

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Serial No: 10/068,704 Filed: February 5, 2002
Attorney Docket No: DP-305557 Examiner: Alejandro, Raymond
Applicant: DeJohn, Charles R.. Group Art Unit: 1745
TITLE: Fuel And Wastewater Storage Device
And Method For A Fuel Cell

I hereby certify that this document is being FACSIMILE TRANSMITTED TO The United States Patent and Trademark Office to the Attention of:

Examiner Raymond Alejandro
Phone Number: 571-272-1282
FAX Number : 703-872-9306

Date of Deposit: November 9, 2004

Signature: 

Lowell M. Train

MS: AMENDMENTS
Commissioner For Patents
P.O. Box 1450
Alexandria, Virginia 22313-15450

AMENDMENT

Dear Sir:

The Office Action rejects claims 1-8 under 35 U.S.C. § 102(e) as anticipated by Becerra et al US 2004/0072049. This rejection is respectfully traversed.

A prior art reference cited under 35 U.S.C. § 102(e) is entitled to a prior art date as of its earliest effective U.S. filing date, taking into consideration any proper benefit claims to prior U.S. applications under 35 U.S.C. 119(e) or 120 *if the prior application(s) properly supports the subject matter used to make the rejection in compliance with 35 U.S.C. 112, first paragraph.* MPEP § 706.02(f)(1) (emphasis added). In the present case, the '049 published application was filed on September 30, 2003, well after Applicants'

USSN 10/068,704

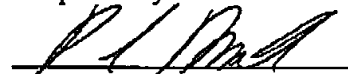
filing date; however, the cited application is a continuation-in-part claiming priority on an earlier application Serial No. 10/041,301 filed January 8, 2002 (less than a month prior to the Applicants' filing date). The parent '301 application was published as US 2003/0129464, which is submitted herewith in an Information Disclosure Statement.

Applicants' claimed invention is directed to a fuel and wastewater storage device for a fuel cell having a movable barrier dividing the interior of the housing into two cavities with a fuel port at the first cavity and a wastewater port at the second cavity. The Office Action asserts that Figure 13 of the '049 reference shows a housing having two cavities with a fuel port at one cavity and a wastewater port at the other cavity. However, the '464 reference (on which the Office Action must rely for a filing date before Applicants' filing date) does not contain a Figure 13, and has no disclosure whatsoever of a second cavity having a wastewater port as required by Applicants' claims. Accordingly, Applicants respectfully submit that the '049 reference cited in the Office Action is not entitled to the earlier January 8, 2002 § 102(e) date with respect to this critical feature of Applicants' claimed invention, and respectfully request that this rejection be withdrawn.

As the application is otherwise in condition for allowance, Applicants respectfully request early action toward that end.

Please charge any additional necessary fees, including any extension of time, or any other fee deficiencies to Delphi Technologies, Inc., Deposit Account No. 50-0831.

Respectfully Submitted:



Paul L. Marshall, Attorney
Registration No: 31,178
Telephone: 248-813-1240

PLM:lt
enclosures